



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

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October 31, 1979

The Honorable Peter W. Rodino, Jr.
Chairman, House Committee on
the Judiciary

HSE 2500

Dear Mr. Chairman:

Subject: Review of Federal Disaster Assistance to Two Libraries in Pennsylvania (CED-80-22)

On June 21, 1979, you asked us to determine the basis for and verify the correctness of dollar amounts included in House bill 2064 to relieve two Pennsylvania communities and their libraries of the obligation to repay Federal disaster assistance funds erroneously remitted to them in the aftermath of Tropical Storm Agnes in 1972. In contrast to the other four libraries named for relief in the House bill, the two libraries in question--the Osterhout Library located in Wilkes-Barre, Pennsylvania, and the West Pittston Library located in West Pittston, Pennsylvania--had not had their claims for disaster assistance audited and settled by Federal authorities by the time in 1976 when the question of ineligibility to receive such assistance was first raised. As a result, precise figures for the amounts of relief which should be provided to these two libraries have not been established.

In order to evaluate the basis for and appropriateness of the amounts of relief provided in House bill 2064 for the Osterhout Library and the West Pittston Library (\$457,318 and \$9,984, respectively), we met with library and local government officials from the two communities and with representatives of the Federal Disaster Assistance Administration (FDAA). 1/ We also reviewed the extensive local and Federal documentation relating to these projects. Our findings and conclusions are summarized below and discussed in greater detail in the enclosures to this letter.



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1/On July 15, 1979, FDAA was abolished and its functions assumed by the newly created Federal Emergency Management Agency (FEMA).

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BACKGROUND

(Following Tropical Storm Agnes in June 1972, 13 Pennsylvania communities applied to the Federal Government for disaster assistance) under the Disaster Relief Act of 1970 (Public Law 91-606) (to repair flood damage to their public libraries.) (The Office of Emergency Preparedness, predecessor of the FDAA, believing that all of the libraries were publicly owned) as required by section 252(a) of the act, (approved these applications and advanced funds to the communities.) The communities in turn proceeded to restore their libraries. 1/

(Early in 1976 a question arose as to the libraries' eligibility for Federal assistance, since several of them did not appear to meet the requirement that they be owned by a State or local government.) On July 7, 1976, the following four libraries were determined by the Department of Housing and Urban Development's (HUD's) Office of General Counsel 2/ to be ineligible: the Osterhout Library (Wilkes-Barre, Pa.), the West Pittston Library (West Pittston Borough, Pa.), the West Shore Public Library (Camp Hill Borough, Pa.) and the Shippensburg Public Library (Shippensburg Borough, Pa.). On November 16, 1976, two additional libraries were determined to be ineligible for the same reason: the Himmelreich Library (Lewisburg Borough, Pa.) and the Milton Library (Milton Borough, Pa.).

*HUD's Office of General Counsel
determined that
6 libraries
was ineligible.
Final
p 1*

The status of the six library restoration projects at the time they were determined to be ineligible for Federal disaster assistance was as follows:

1/Applications for disaster assistance for library restoration were made on behalf of the libraries by the municipalities in which they were located. Library restoration was a part of these municipalities' overall flood repair projects.

2/FDAA, before the reorganization of disaster assistance agencies which created FEMA, was part of HUD.

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- A. Restoration work completed, Federal audit of overall project claim completed, and final payment made by FDAA:
 1. West Shore Public Library
 2. Shippensburg Public Library
 3. Himmelreich Library
 4. Milton Library

- B. Restoration work completed, overall municipal project claim submitted, and Federal audit being conducted:
 1. West Pittston Library

- C. Restoration work completed, no overall municipal project claim submitted, no final Federal audit:
 1. Osterhout Library

WEST SHORE, SHIPPENSBURG,
HIMMELREICH, AND MILTON LIBRARIES

Following the determination of ineligibility, FDAA issued bills for collection to the four libraries/communities to which final project payment had been made. House bill 2064 provides for relief in the amounts of these bills for collection. The amounts represent the eligible costs of repairing the libraries in question as determined through final FEMA audits. 1/

Osterhout Library

House bill 2064's figure of \$457,318 represents Federal funds that were advanced to the Osterhout Library through the City of Wilkes-Barre before the library was found to be privately owned and therefore ineligible for disaster assistance.

1/A final audit of a disaster relief project is performed only after all aspects of the project are completed and after the work is inspected and compared to the originally authorized scope of work. In conducting a final audit, Federal auditors from FEMA or its designee determine the actual amount a community spent for eligible repairs and thus the precise amount of disaster assistance it is entitled to receive.

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The City of Wilkes-Barre, on behalf of the Osterhout Library, has taken the position that it should receive Federal disaster assistance of \$565,423. This is the approximate amount which the library would have been entitled to had it been deemed eligible for Federal assistance. However, since no final Federal audit has been made of the Osterhout's restoration records, no precise eligible amount for this project has been established.

WEST PITTSTON LIBRARY

As in the case of the Osterhout Library, an audit of the West Pittston Borough flood repair project had not been made by the time (July 7, 1976) the Government determined that West Pittston Library was ineligible for Federal disaster assistance. However, a Federal audit of West Pittston Borough's overall disaster assistance project (including the library) was underway by mid-July 1976.

In the July 20, 1976, audit report prepared for the West Pittston disaster assistance project, HUD's Regional Inspector General for Audit relied upon the legal determination of the library's ineligibility to dispense with an audit of the library portion of the Borough's project. Instead, he deducted from the West Pittston claim the entire amount which the community had cited for library restoration work.

The amount of relief, \$9,984, provided for West Pittston in House bill 2064 is incorrect, as acknowledged by FEMA officials, and has no relation to the amounts which have been advanced for or expended on the restoration of the West Pittston Library. West Pittston Borough has submitted a claim for \$48,985.95 for repairs to the community's library. This is the approximate amount which the library contends it would have received had it been deemed eligible for Federal assistance. However, FEMA has not conducted a final audit of West Pittston Library's restoration records. Therefore, no precise figure has been established for the amount due West Pittston if the library had been determined eligible for Federal assistance.

DETERMINATION OF APPROPRIATE AMOUNTS
OF RELIEF TO BE GRANTED OSTERHOUT
LIBRARY AND WEST PITTSTON LIBRARY

The decision regarding the appropriate amount of relief for the communities of Wilkes-Barre and West Pittston on behalf of their libraries is essentially a policy judgment that will have to be made by the Congress. Apart from the obvious choice of granting no relief at all, in our view, there appear to be two principal options:

- Limit the amount of relief to Federal funds actually advanced to the communities for library restoration before the determination of ineligibility.
- Treat the libraries as if they had been eligible to receive Federal disaster assistance under Public Law 91-606 and provide such assistance to the full extent of eligible costs incurred in restoration.

Under option I Wilkes-Barre and West Pittston would not have to repay Federal funds advanced to them to repair their libraries before the determination in 1976 that the libraries were not eligible for disaster assistance under the provisions of Public Law 91-606. This approach is essentially the one adopted by House bill 2064, with the exception of the erroneous figure provided for West Pittston. In the case of Osterhout/Wilkes-Barre, House bill 2064 provides relief in the amount of \$457,318, the total amount advanced to Wilkes-Barre by FDAA for restoration of the library before the determination of ineligibility. In the case of West Pittston, the appropriate amount of relief under this option would have to be determined through Federal audit of the library claim.

This option would limit the obligation of the Federal Government to the extent of funds already advanced. Its most significant drawback lies in the unequal and inconsistent treatment of the six communities/libraries involved.

Option II would provide for full Federal reimbursement of eligible costs of library restoration. It would entail additional Federal payments to the City of Wilkes-Barre and the Borough of West Pittston. In addition to relieving these communities of the obligation to repay Federal funds already advanced to them for library restoration, Wilkes-Barre and West Pittston would, upon completion of a Federal audit of their library claims, be reimbursed for the remainder of eligible library restoration costs. This approach would

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ensure equal and consistent treatment of all communities concerned. No community would be penalized simply because it had not been able to arrange a Federal audit and settlement of its claim before the determination of its ineligibility--nearly 4 years after Tropical Storm Agnes and the original approval of restoration work. (For further discussion of these options, see enclosure.)

It is our view that the actual granting of any relief by the Congress should be conditioned upon a full and complete audit of the Osterhout and West Pittston library claims by the appropriate Federal authorities.

As arranged with your Office, we are sending copies of this report to appropriate agency officials as well as to Representatives Allen Ertel, Bud Shuster, Daniel J. Flood, and William Goodling. Unless you publicly announce its contents earlier, we plan no further distribution of this report until 7 days from the date of the report. At that time, we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,


Deputy Comptroller General
of the United States

OSTERHOUT LIBRARY/WILKES-BARRE

This library restoration project was undertaken in two phases. Phase I, substantially completed in 1974, audited 1/ in September 1975, and reviewed by FDAA in January 1976, dealt with the restoration and repair of the library's physical plant. The audited eligible phase I costs were \$173,531.42. Phase II, which has not been audited by Federal authorities, consisted of a \$391,892 grant for the replacement of books, periodicals, and other documents damaged or lost as a result of the 1972 flood.

Our examination of the records of the Osterhout project indicated that by August 5, 1975, work on phase II had been completed, documented, inspected, and approved by Federal officials. By letter of October 7, 1975, Osterhout's chief librarian had requested the Regional Director of FDAA in Philadelphia to audit the phase II grant so that the claim could be settled. The record further shows that on January 1, 1976, the Regional Office of FDAA requested HUD's Regional Inspector General of Audit to audit phase II.

It appears from the record (and this has been confirmed in discussions with FEMA officials) that when the question of the possible ineligibility of the Osterhout Library was first raised in early 1976, Federal authorities took no further action regarding the request for final audit of the Osterhout/Wilkes-Barre claim. Also, no further Federal funds were advanced to the library project.

On July 22, 1976, the Regional Director of FDAA notified the City of Wilkes-Barre that the Osterhout Library

1/The audit of phase I restoration work was performed by the Department of Health, Education, and Welfare. Because of the large amount of disaster assistance work resulting from Tropical Storm Agnes, the Office of Emergency Preparedness and later FDAA relied on other Federal and State government agencies for help in processing disaster assistance applications. The Department of Health, Education, and Welfare was assigned responsibility for work relating to library restorations.

had been declared ineligible for Federal disaster assistance under Public Law 91-606 and that, accordingly, authorization for FDAA funds previously authorized for the library's restoration was being withdrawn. FDAA suspended a total of \$612,358, representing the amount approved for the library portion of the city's application for Federal disaster assistance.

As noted previously, House bill 2064's figure of \$457,318 represents Federal funds advanced to the Osterhout Library through the City of Wilkes-Barre before the determination that the library was privately owned and hence not eligible for Federal disaster assistance. This is in contrast to the four libraries--West Shore, Shippensburg, Himmelreich, and Milton--for which House bill 2064's figures represent the FDAA-determined eligible costs of their audited restoration claims.

WEST PITTSTON LIBRARY/WEST PITTSTON

In contrast to Wilkes-Barre's handling of Federal disaster assistance for its municipal flood repair work, the Borough of West Pittston did not distinguish between Federal funds advanced for library restoration and funds advanced for other eligible municipal flood repair work. Thus, while FDAA records show that on November 28, 1972, \$33,347 was advanced to the Borough of West Pittston to repair its library, in fact, only \$24,812 of these funds were devoted to library restoration. The remainder was used by the municipality for other aspects of its flood repair project. The balance of the costs of repairs to the West Pittston Library was paid by the West Pittston Borough Council (\$17,953.00) and the West Pittston Library Association (\$6,220.95) in anticipation of eventual Federal reimbursement through settlement of West Pittston's disaster assistance claim. The library portion of this claim has not been settled to date due to the determination of the library's ineligibility for Federal disaster assistance.

In a letter dated July 23, 1976, FDAA's Regional Director informed Pennsylvania State officials that he had instructed the HUD auditor to suspend the amount (\$48,985.95) claimed by West Pittston Borough on behalf of the library and also that action had been taken to deobligate all FDAA funds (\$49,914.50) which were previously obligated for the library. In addition, in an action which was totally unrelated to the library's eligibility determination, FDAA issued a bill for collection in the amount of \$9,984 for "non-library over-advances" which West Pittston Borough had received from the

Federal Government but for which it was not eligible based on the Federal audit of the Borough's overall claim.

OPTION I: LIMIT RELIEF TO FUNDS
ACTUALLY ADVANCED BY THE FEDERAL
GOVERNMENT

Under this option, Wilkes-Barre and West Pittston would not have to repay Federal funds advanced to them to repair their libraries before the determination in 1976 that these libraries were not eligible for disaster assistance under the provisions of Public Law 91-606.

The justifications for this approach are set forth in an opinion of HUD's Office of General Counsel (see exhibit I) regarding Senate bill 400 (see exhibit II), which is virtually identical to House bill 2064 in its provisions.

The most significant drawback of this approach, however, lies in the unequal treatment of the six communities involved. Four of the communities--Camp Hill, Shippensburg, Lewisburg, and Milton--were fortunate enough to have completed library restoration work and to have had their claims audited and settled by the Federal Government before they were declared ineligible to receive funds. As a result, these communities would be relieved of the liability to refund to the Federal Government the entire cost of their library restoration work. In the case of Wilkes-Barre and West Pittston, on the other hand, only a portion of the cost of library restoration had been funded before the determination of ineligibility. As a consequence, only a portion of the costs of restoration would be borne by the Federal Government. The remainder would have to be borne by the two communities.

In the case of Osterhout/Wilkes-Barre, House bill 2064 provides relief in the amount of \$457,318, the total amount FDAA advanced Wilkes-Barre for restoration of the library before the determination of ineligibility. In the case of West Pittston, the appropriate amount of relief under this option would have to be determined through Federal audit of the library portion of the claim. As noted, FDAA records show an advance of \$33,347 for restoration of the West Pittston Library, whereas West Pittston officials chose at the time of receipt of these funds to divide them between the library (\$24,812) and other approved municipal flood repair work (\$8,535).

OPTION II: FULL FEDERAL
REIMBURSEMENT OF AUDITED,
ELIGIBLE COSTS OF RESTORATION

Adoption of this approach would entail additional Federal payments to the City of Wilkes-Barre and the Borough of West Pittston. In addition to relieving these communities of the obligation to repay Federal funds previously advanced for library restoration, Wilkes-Barre and West Pittston would, upon completion of a Federal audit of their library claims, be reimbursed for the remainder of eligible library restoration costs.

A number of the factors and circumstances cited to support option I might also be advanced to justify adoption of this approach by the Congress. For example:

- The communities involved, including Wilkes-Barre and West Pittston, acted in good faith and relied upon Federal Government determinations as to their eligibility for disaster assistance in undertaking repair and restoration of their storm-damaged libraries. (See exhibit I, report of the Office of General Counsel, HUD.)

- This is a case of limited applicability where, because of the unique circumstances involved--these are the only privately owned libraries nationwide which erroneously received disaster relief payments under section 252(a) of Public Law 91-606--the remedy provided will not establish an undesirable precedent. (See exhibit I, report of the Office of General Counsel, HUD.)

- The Disaster Relief Act of 1974 (Public Law 93-288) which repealed the Disaster Relief Act of 1970 (Public Law 91-606) has been interpreted by FEMA to authorize Federal disaster assistance to privately owned libraries that receive a certain amount of public funding. If the storm damage in question had occurred on or after the effective date of the 1974 act, all of these libraries would have been eligible for Federal disaster assistance.

The following additional factors might also be cited as possible justifications for adoption of this option.

--This approach would ensure equal and consistent treatment of all communities concerned. No community would be penalized simply because it had not been able to arrange a Federal audit and settlement of its claim before the determination of its ineligibility. Noteworthy in this regard is the acknowledgment by FDAA officials that audit and settlement of the Osterhout/Wilkes-Barre and West Pittston library claims were delayed, despite requests for such audits by local officials, until final determination of the libraries' eligibility for disaster assistance under the 1970 act. If audit and settlement had taken place before the determination of ineligibility, Osterhout/Wilkes-Barre and West Pittston would now find themselves in the position of the other four communities named in House bill 2064: they would be provided relief in the full amount of eligible costs of library restoration.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,
OFFICE OF THE GENERAL COUNSEL
Washington, D.C.

HON. EDWARD M. KENNEDY,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

(Subject: S. 400 (Schweiker), 96th Congress.)

Dear MR. CHAIRMAN: This is in response to your request for our views on S. 400, a bill to relieve the liability for the repayment of certain erroneously made contributions by the United States.

The bill would release six privately owned libraries in Pennsylvania from liability for the repayment of contributions erroneously made by the United States for disaster relief in connection with Hurricane Agnes.

In June 1972 a number of States, including Pennsylvania, suffered extensive damage from tropical storm Agnes. Section 252(a) of the Disaster Relief Act of 1970 (Public Law 91-606) authorized Federal payments to State and local governments for the repairs, restoration or replacement of public facilities. Accordingly, the Federal Government¹ made payments to local governments for repairs to destroyed or damaged public facilities including the six privately owned libraries stipulated in the bill. However, it was later determined that although these libraries were nonprofit entities and did receive some public support, they were, as privately rather than publicly owned facilities, improper recipients of the disaster relief funds.

The payments were made in an emergency situation when speedy determination of eligibility and dispensing of assistance were absolutely essential. There were at the time some indicia of the public nature of the libraries to support a determination of public ownership—all received public funds from local tax revenues and provided services free of charge to the public, and five of the six library facilities were in structures owned by a library board or association and had corporate names implying public ownership.

It was not until the spring of 1976, when the FDAA's Central Office reviewed a request for a time extension for completion of repairs to one of the libraries involved, that the question arose as to the eligibility of the libraries for assistance as publicly owned facilities. In June 1976, this Department's Office of General Counsel issued a legal opinion concluding that the Federal Government had not been authorized to make contributions to repair damages to the six libraries in question since, despite the fact that they were nonprofit institutions supported in part by public funds, they did not belong to a State or local government as required by the Disaster Relief Act of 1970. In the meantime, the libraries had expended the Federal funds received under the act in reliance upon the Federal Government's determination as to their eligibility.

The libraries, although technically privately owned, served the public without charge. Given the speed with which a large volume of disaster assistance applications had to be processed after tropical storm Agnes, and the public nature of these facilities, the mistake that occurred is understandable. To require the libraries to reimburse the Government for these grants at this time would only serve to penalize the beneficiaries of their services—the public. In our opinion, this is a case of limited applicability where, because of the unique circumstances involved, the remedy provided by the bill will not establish an undesirable precedent.

Accordingly, we would have no objection to the enactment of S. 400.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

EDWARD W. NORTON,
Acting General Counsel.

¹ Authority for making these payments was at this time vested in the Office of Emergency Preparedness in the Executive Office of the President. Authority for disaster relief assistance of this nature was subsequently (1972) vested in this Department's Federal Disaster Assistance Administration (FDAA).

96TH CONGRESS
1ST SESSION

S. 400

IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 1979

Referred to the Committee on the Judiciary

AN ACT

To relieve the liability for the repayment of certain erroneously made contributions by the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That, notwithstanding the provisions of section 252(a) of the Disaster Relief Act of 1970, any unit of local government or any of the following privately owned libraries is relieved from any liability for the repayment of contributions erroneously made by the United States for disaster relief activities for the benefit of the following private facilities which were damaged or destroyed by Hurricane Agnes:

- (1) the William D. Himmelreich Memorial Library in Lewisburg, Pennsylvania, in the amount of \$4,136;
- (2) the Milton Library in Milton, Pennsylvania, in the amount of \$21,869;
- (3) the Shippensburg Public Library in Shippensburg, Pennsylvania, in the amount of \$12,827;
- (4) the West Shore Public Library in Camp Hill, Pennsylvania, in the amount of \$26,772;
- (5) the Osterhout Library in Wilkes-Barre, Pennsylvania, in the amount of \$457,318; and
- (6) the West Pittston Library in West Pittston, Pennsylvania, in the amount of \$9,984.

SEC. 2. In the audit and settlement of the accounts of any certifying or disbursing officer of the United States, credit shall be given for the amount for which liability is relieved by the Act.

Passed the Senate June 21 (legislative day, May 21), 1979.

Attest:

J. S. KIMMITT,
Secretary.